

BONNIE L. CHAFE

IBLA 81-920

Decided September 10, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 61734.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

APPEARANCES: Bonnie L. Chafe, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bonnie L. Chafe has appealed from the California State Office, Bureau of Land Management (BLM), decision dated June 25, 1981, which declared the unpatented Mark-Lee placer mining claim, CA MC 61734, abandoned and void because evidence of assessment work or notice of intent to hold, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, was not filed with BLM on or before December 30, 1980. The claim was located December 26, 1979.

Appellant states the proof of labor was filed November 19, 1980, with the County Recorder of San Bernardino County, California, and

that a copy of the required proof had been mailed to BLM. She cannot explain why BLM did not receive the document, unless it was lost by the Postal Service. With her appeal, she enclosed a copy of the proof of labor recorded November 19, 1980, as entry 80-264768 in the records of San Bernardino County.

[1] Section 314 of FLPMA, supra, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4, require that evidence of assessment work or notice of intent to hold be filed with the proper office of BLM before December 31 of each year after the calendar year in which the claim was located under penalty of a conclusive presumption that the claim has been abandoned if the document is not timely or properly filed for recordation with BLM.

Despite appellant's statement that the document was properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the mailing were prevented by Postal Service error from reaching the BLM office, that fact would not excuse appellant's failure to comply with the regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of the filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra; James E. Yates, supra; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f). BLM correctly declared the lode mining claim abandoned and void when no proof of labor or notice of intention to hold was received on or before December 30, 1980.

Appellant should confer with BLM about the possibility of relocating this claim.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

